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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,521	11/01/2001	Timothy Samuel Girton	760-35 CIP	6660
7590 Daniel A. Scola, Jr. HOFFMANN & BARON, LLP 6900 Jericho Turnpike Syosset, NY 11791			EXAMINER PATTERSON, MARC A	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 07/07/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/002,521

Applicant(s)

GIRTON ET AL.

Examiner

MARC A. PATTERSON

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,21,22,24 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,21,22,24 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF006)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

REPEATED REJECTIONS

1. The 35 U.S.C. 103(a) rejection of Claims 3 and 21 – 22 as being unpatentable over Houser et al (U.S. Patent No. 6,361,559 B1), of record on page 2 of the previous Action, is repeated.
2. The 35 U.S.C. 103(a) rejection of Claim 2 as being unpatentable over Houser et al (U.S. Patent No. 6,361,559 B1) in view of Chuter (U.S. Patent No. 6,293,969), of record on page 2 of the previous Action, is repeated.
3. The 35 U.S.C. 103(a) rejection of Claims 24 and 27 as being unpatentable over Freiburger et al (U.S. H1978 H), of record on page 2 of the previous Action, is repeated.

ANSWERS TO APPLICANT'S ARGUMENTS

4. Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 3 and 21 – 22 as being unpatentable over Houser et al (U.S. Patent No. 6,361,559 B1), 35 U.S.C. 103(a) rejection of Claim 2 as being unpatentable over Houser et al (U.S. Patent No. 6,361,559 B1) in view of Chuter (U.S. Patent No. 6,293,969) and 35 U.S.C. 103(a) rejection of Claims 24 and 27 as being unpatentable over Freiburger et al (U.S. H1978 H), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 7 of the remarks dated March 25, 2009, that an interpenetrating polymer network is not disclosed by Houser et al.

However, the specification at paragraph 0035 states that blending of the extractable polymeric component with PTFE still results in separation such that removal of the extractable polymeric component leaves a pore or void; the specification therefore discloses that simply blending PTFE and the extractable polymeric component, siloxane, provides an interpenetrating polymer network.

Applicant also argues, on page 8, that Houser et al do not disclose a vascular graft as defined in the application.

However, the use of the graft of Houser et al is clearly used in vascular procedures; it is therefore unclear what the definition of the application is that differs from that of Houser et al.

Applicant also argues on page 10, that Freiburger et al is nonanalogous art because it is directed to monolithic films and undergarments.

However, Freiburger et al is not limited to monolithic films and undergarments.

Applicant also argues, on page 13, that Freiburger et al fail to disclose the claimed pore size or extractable domains.

However, as stated above, Houser et al disclose an interpenetrating network of PTFE and silicone and therefore discloses a silicone domains that are capable of being extracted to create pores

Applicant also argues, on page 14, that it would not have been obvious for one of ordinary skill in the art to modify Freiburger et al to provide the claimed pore size.

However, it is unclear where the modification is asserted in the previous Action.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/
Primary Examiner, Art Unit 1794